IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 19501 of 2007(V)

AGAINST THE ORDER DATED 05/01/2007 IN IA.5327/06 IN IA.1238/02 IN OS.4/2000 of I ADDL.SUB COURT, THRISSUR

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PETITIONER:

VELAYUDHAN, S/O.KALLADATHIL KOCHAKKAN,
AVINISSERY VILLAGE, THRISSUR.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:

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1. KERALA KHADI AND VILLAGE INDUSTRIES ASSOCIATION, AVINISSERY VILLAGE, THRISSUR TALUK, REPRESENTED BY ITS SECRETARY.

2. AVINISSERY SERVICE CO-OPERATIVE BANK LIMITED NO.400, AVINISSERY VILLAGE, THRISSUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 19501 OF 2007 V

Dated this the 28th June, 2007.

JUDGMENT

This writ petition is filed seeking to set aside Ext.P1 order passed by the learned I Additional Sub Judge in O.S.4/00. The question involved is regarding the attachment to be made if the amount is due under the Employees Provident Fund Act of 1952. The court below found that the protection is available so long as the amount remains in the provident fund account. But it would vary when the amount is received by the employee. Now the finding in this case is that the amount has been received by the employee by crediting the amount to his savings bank account. The learned counsel had brought my attention to the decision of this court reported in **Thomas George v. Soudamini Manakkal** (1997 Lab.I.C.1012). In that case it was held that it cannot be attached. A mere perusal of the facts would reveal that the amount due to the employee was held in deposit by the employer or in other words the custody of the amount was with the employer and it has never been transferred to the employee. But in the case before me the amount is already credited to the savings bank account of the employee and employee has become the owner of the said amount. When such is the situation this

Court in **Divakaran v. Jayaraman** {1992(1) KLT 266} held that once the amount is received by the employee on his retirement attachment is possible and exemption will not be available. The same principle also had been followed by a Learned Judge of Madras High Court in the decision reported in **Sathiyabama v. Palanisamy** {2004(3) KLT page 53 S.N.72}. The principle laid down therein is that amounts due as provident fund, leave salary, gratuity etc due to the deceased employee cannot be attached in the hands of employer pending suit for recovery of money. So an analysis of the principles laid down in all these decisions would indicate that so far as the amount due is with the employer it cannot be attached and the moment it reaches the hands of the employer it looses exemption and therefore it is attachable. Therefore, I do not find any ground to interfere with the decision rendered by the learned Subordinate Judge. Hence the writ petition is dismissed.

M.N.KRISHNAN
Judge

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